

FILED
02-22-2024
Anna Maria Hodges
Clerk of Circuit Court
MILWAUKEE COUNTY
2023CV009204

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

JAMES ELLIS and DARRYL ELLIS,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

vs.

NATIONSTAR MORTGAGE LLC d/b/a MR.
COOPER,

Defendant.

Case No. _____

Hon.

AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Amended Class Settlement Agreement (“Agreement”) between Plaintiffs and putative Class Representatives James Ellis (“J. Ellis”) and Darryl Ellis (“D. Ellis” and, together with J. Ellis, “Plaintiffs” or “Class Representatives”) individually, and on behalf of the putative class of similarly situated persons and Defendant Nationstar Mortgage LLC d/b/a Mr. Cooper (“Nationstar” or “Defendant”), was reached after arms-length negotiations between counsel for all parties and is entered into as of January __, 2024.

RECITALS

1. On May 6, 2019, Plaintiffs filed an action in the United States District Court for the Eastern District of Wisconsin, alleging that Nationstar was liable to Plaintiffs and similarly situated persons in connection with Nationstar’s acquisition of Pacific Union Financial, LLC (“PUF”), the former servicer of Plaintiffs’ and other class members’ mortgages. The action was styled *Ellis v. Nationstar Mortgage LLC*, No. 2:19-cv-661 (E.D. Wis.) (the “Federal Action”). On October 14, 2020, Plaintiffs filed a Third Amended Class Action Complaint in the Federal Action, realleging claims under the federal Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.* (the “EFTA”),

the federal Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* (“RESPA”), the federal Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (“TILA”), and Ch. 224, Wis. Stats. (“Section 224”) (the “Federal Action Complaint”).

2. Following two attempts to mediate with the Hon. William E. Duffin, the Parties engaged in settlement discussions throughout the course of 2022, and ultimately reached an understanding regarding the resolution of the Federal Action Complaint pursuant to which the Parties would agree that all statutes of limitations would be tolled while the Parties stipulated to dismiss the Federal Action without prejudice, the Parties would file a new action in Milwaukee County Circuit Court (the “State Court Action”), and the Parties would file for approval of a classwide settlement of the State Court Action. The Federal Action has since been closed administratively with the option of reopening the Federal Action upon request.

3. Class Representatives and the putative Class and Subclass are represented by Shpetim Ademi, John D. Blythin, Jesse Fruchter, Ben J. Slatky and Ademi LLP, (“Class Counsel”). Class Counsel states that they have conducted a thorough investigation of the facts pertinent to the Complaint and likewise investigated the law regarding the claims against Nationstar, and the asserted defenses. Class Counsel recognizes the risk and expense associated with a trial of Plaintiffs’ claims and any further appeals that may follow, and the uncertainty inherent in complex litigation, and has concluded that the settlement set forth in this Settlement Agreement is in the best interest of Plaintiffs, the Class and Subclass, and, ultimately, judicial economy.

4. Nationstar denies that it is liable in any way to the Class Representative or the Class and denies that its actions violated the EFTA, TILA, RESPA, and Section 224 in any manner. Nationstar’s counsel states that they have conducted a thorough investigation of the facts pertinent to the Complaint and likewise investigated the law regarding the claims against Nationstar and the

asserted defenses. Nationstar is willing to enter into this Agreement to avoid the further expense and inconvenience of litigation, and has concluded that it is in its best interest to resolve and settle all claims which have been made or could be made against it by the Class arising out of the matters alleged in the Complaint and Nationstar's alleged violations of the EFTA, TILA, RESPA, and Section 224.

5. In consideration of the foregoing and other good and valuable consideration, the Class Representative, Class Counsel, and Nationstar stipulate and agree that the claims of the Class Representative and the Class against Nationstar should be and are hereby compromised and settled, subject to the final approval of the Court, after a hearing, and upon entry of a final judgment of dismissal with prejudice as provided in this Agreement, all subject to the following terms and conditions. This Agreement shall be filed as Exhibit A to the Parties' Joint Motion for Preliminary Approval of Class Settlement Agreement.

SETTLEMENT TERMS

6. **Effective Date.** The effective date of this Agreement shall be the date of the entry of the Final Order if no objections to the settlement are made by the time of the fairness hearing ("Effective Date"). If objections to this Agreement have been made by the time of the fairness hearing, the Effective Date shall be the later of (a) the date of the expiration of the time to appeal from the Final Order without an appeal having been taken or; (b) if an appeal shall be taken from the Final Order, the date upon which all appeals, including petitions for leave to appeal, *certiorari*, or rehearing, or any proceedings resulting therefrom, have been finally disposed of in such manner that the Agreement is affirmed in its entirety and the settlement may be consummated without change. The parties waive their rights to appeal from any Final Order entered in accordance with the terms of this Agreement. The parties shall each bear their own costs and expenses in responding to any appeal taken from the Final Order.

7. **Certification of Settlement Class.** For purposes of this settlement only, Plaintiffs and Nationstar agree to the Court's conditional certification of a Settlement Class (the "Class") and a Settlement Subclass (the "Subclass").

The Class is defined as:

(a) all natural persons in the United States of America (b) whose residential mortgage loan servicing rights were transferred from PUF to Nationstar, and (c) to whom PUF and Nationstar mailed "Notice of Transfer of Servicing Rights" letters in substantially the same form as Exhibits C and E to the Complaint.

The Subclass is defined as:

(a) all natural persons in the United States of America, (b) whose residential mortgage loan servicing rights were transferred from PUF to Nationstar and (c) who had executed an electronic funds transfer authorization with their prior servicer, (d) and from whom PUF and Nationstar collected overlapping payments.

8. J. Ellis and D. Ellis shall represent the Class and the Subclass. The Class consists of approximately 125,000 persons and the Subclass consists of approximately 3,000 persons according to Nationstar's records. The law firm of Ademi LLP shall act as Class Counsel.

9. Upon execution of this Agreement, the Parties will jointly request that the Court preliminarily find that this Agreement is fair to all Class Members and approve the long form class notice ("Long Form Notice") attached as Exhibit C to the Parties' Joint Motion for Preliminary Approval of Class Settlement Agreement and the postcard notice ("Postcard Notice") attached as Exhibit D to the Parties' Joint Motion for Preliminary Approval of Class Settlement Agreement. The approval process is described further in paragraphs fourteen (14) through sixteen (16), below.

10. If this Agreement fails to be approved or otherwise fails to be consummated in accordance with its terms:

a. Plaintiffs shall be entitled to voluntarily dismiss the State Court Action and reopen the Federal Action individually and on behalf of all persons similarly situated (including the members of the Class and Subclass) in accordance with the rulings, circumstances and procedural posture that existed in this case on April 28, 2022, and

b. Nationstar shall retain all rights to continue its defense to this case in accordance with the rulings, circumstances and procedural posture that existed in this case on April 28, 2022.

11. **Settlement Consideration.** In consideration of the full and complete settlement, release, and discharge of all claims of Class Representative and the Class and Subclass against Nationstar, and subject to the provisions of this Agreement and all applicable orders of the Circuit Court, Nationstar promises as follows:

a. **Common Fund.** Nationstar shall make an initial payment of Two Hundred Thousand Dollars (\$200,000) (“Payment of Costs of Notice and Administration”) into the Common Fund deposited into an Escrow Account no later than thirty (30) days after the later of: (i) entry of the Preliminary Approval and Scheduling Order by the Circuit Court; and (ii) receipt by Nationstar of each of (a) a copy of the Preliminary Approval and Scheduling Order as entered by the Circuit Court (which will be transmitted by Nationstar’s Counsel on the day received), (b) a W-9 for the Escrow Account, and (c) wire or mailing instructions for delivery to the Escrow Account. Nationstar shall pay Eight Hundred Thousand Dollars (\$800,000) into the Common Fund deposited into an Escrow Account no later than thirty (30) days after the Effective Date (the “Due Date”) per the same wire or mailing instructions for delivery to the Escrow Account as designated for the Payment of Costs of Notice and Administration. The Common Fund will be used to pay: (i) the attorneys’ fees and related litigation costs and expenses of Class Counsel, (ii)

the claims administration costs incurred by the Third-Party Claims Administrator, (iii) the individual damages of the Class Representatives, along with a customary incentive award subject to approval by the Court, and (iv) the monetary recovery shared amongst the members of the Class and Subclass who submit claims, in accordance with the schedule detailed below. There shall not be any reversion of the Common Fund.

b. **Attorneys' Fees and Costs.** Subject to Court approval, Class Counsel shall receive payment from the Common Fund, within thirty (30) days of the Due Date, for attorneys' fees and related litigation costs and expenses, in an amount not to exceed Thirty-Five Percent (35%) of the Common Fund, or Three Hundred Fifty Thousand Dollars (\$350,000). Defendant agrees not to oppose any application or petition by Class Counsel for approval of attorneys' fees and costs in an amount not to exceed Thirty-Five Percent (35%) of the Common Fund, or Three Hundred Fifty Thousand Dollars (\$350,000).

c. **Costs of Notice and Administration.** Upon the Payment of Costs of Notice and Administration, distributions from the Common Fund will be used to pay all costs associated with the mailing of the Postcard Notice, establishment and maintenance of a settlement website containing the Long Form Notice and Claim Form, as described in paragraph fourteen (14) below, and all costs incurred for Third Party Administration of the Class Recovery, which are anticipated to be no more than Two Hundred Thousand Dollars (\$200,000).

d. **Recovery to Class Representatives.** Each Class Representative shall be paid Twelve Thousand Five Hundred Dollars (\$12,500) at the time of distribution of funds to Class Counsel as alleged damages and for their efforts as Class Representatives. These payments shall be made within thirty (30) days from the Due Date, and be made to Class Counsel's client trust account, Ademi LLP Client Trust Account.

e. **Subclass Recovery.** A total of One Hundred Thousand Dollars (\$100,000) from the Common Fund shall be set aside for *pro rata* distributions to the Claimants in the Subclass, up to a maximum of Three Hundred Fifty Dollars (\$350) per Claimant. In the event there are funds remaining in the Subclass Recovery Fund after paying \$350 to each Claimant in the Subclass shall be distributed amongst the Claimants in the Class.

f. **Class Recovery.** The remaining portion of the Common Fund will be shared on a *pro rata* basis amongst the 125,000 Claimants in the Class, including the Claimants in the Subclass. Class Representatives are eligible to submit a claim. All payment instruments issued to Claimants in the Class and Subclass shall indicate on their face that they are void after one hundred and twenty (120) days from the date issued (“void date”), and shall be sent to the Claimants by first-class mail within thirty (30) days of the Due Date. Any portion of the Subclass Recovery and/or Class Recovery that is unclaimed by the Class, because the settlement check was returned as undeliverable or without a forwarding address, or because the check remains uncashed one hundred and twenty (120) days after distribution, shall be donated to the Wisconsin Trust Account Foundation, Inc. (“WisTAF”) as a *cy pres* award.

12. Notwithstanding anything to the contrary in this Agreement, including all exhibits, under no circumstances shall the liability of Nationstar under this Agreement exceed the aforementioned sums, limited to payment to the Common Fund of One Million Dollars (\$1,000,000).

13. **Release.** As consideration for this Agreement, and upon the Effective Date, the Class Representatives and the members of the Class and Subclass, including each and every one of their respective present, former and future agents, representatives, attorneys, heirs, administrators, executors, assigns or any other person acting on their behalf or for their benefit

(collectively, “Releasers”) hereby release and discharge Nationstar, as well as their respective predecessors and successors in interest and present, former and future affiliates, parents, subsidiaries, related parties, insurers, officers, directors, agents, employees, members, shareholders, general partners, limited partners, beneficiaries, representatives, heirs, attorneys, collectors, brokers, assigns, or entities (collectively, “Releasees”) from any causes of action, suits, claims or demands whatsoever, in law or in equity, known or unknown at this time, which the Class Representatives and the Class and Subclass now have or ever had against the Releasees, or any of them, under any legal theory, whether or not alleged, arising out of the allegations in or subject matter of the Complaint.

14. **Class Notice.** Class Counsel are responsible for selecting a claims administrator to provide and administer notice of the proposed Settlement to the Settlement Class Members, and as such, Class Counsel were hereby authorized to retain [INSERT NAME] as Claims Administrator. Subject to the direction and approval of the Escrow Agent, the Claims Administrator shall pay from the Fund the costs and expenses reasonably and actually incurred in connection with providing notice to Settlement Class Members, mailing the Postcard Notice and establishing and maintaining a website containing the Long Form Notice and Proof of Claim, and publishing Summary Notice, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proofs of Claim and Releases, and paying escrow fees and costs, if any, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims (together, the “Notice and Administration Costs”). All Notice and Administration Costs shall be paid from the Common Fund. In the event that the Settlement does not become final, any money paid or incurred for the above purposes shall not be returned or repaid to Nationstar or its

insurers. Postcard Notice shall be provided to each Class Member's last known address, as provided by a national change of address database update search. This form of notice is sufficient and any Class Member who does not timely submit a claim form shall not receive a distribution from the Class Recovery or Subclass Recovery, but will otherwise remain a member of the Class for all other purposes of this Agreement and settlement. No skip-tracing shall be required or done as to any Postcard Notices that are returned by the postal service as undeliverable and with no forwarding address. Postcard Notices returned with a forwarding address shall be re-mailed to the new address within five (5) business days. The Parties will notify each other within a reasonable amount of time of the receipt of any objection to this Agreement received from a member of the Class. Class Members, subject to the Court's approval, shall have forty-five (45) days in which to return a claim form or file an objection. Class Counsel shall, at least ten (10) business days before the Final Approval Hearing, file with the Court an appropriate affidavit or declaration regarding preparation and distribution of the Postcard Notice, website, Long Form Notice, Proof of Claim and Release, and Summary Notice.

15. **Preliminary Approval.** The Parties will jointly request Preliminary Approval of the settlement set forth in this Agreement, and will request the entry of an order of Preliminary Approval in the form attached as Exhibit B to the Parties' Joint Motion for Preliminary Approval of Class Settlement Agreement ("Preliminary Order"). The fact that the Court may require non-substantive changes in the Preliminary Order does not invalidate this Agreement. If the Court refuses to grant Preliminary Approval, then this Agreement shall be null and void and the provisions of paragraph ten (10) will apply. The Parties agree to request a date for the Final Approval Hearing approximately one hundred twenty (120) days from the date of the Court's issuance of the Preliminary Order.

16. **Final Approval.** After Notice to the Class and an opportunity to object, the Parties shall jointly move for a final order in the form attached as Exhibit E to the Parties' Joint Motion for Preliminary Approval of Class Settlement Agreement ("Final Order") which (a) approves the settlement set forth in this Agreement as fair, reasonable and adequate and directs its administration in accordance with the terms of this Agreement; (b) finds that the notice given to the Class satisfied the requirements of Due Process and Wis. Stat. § 803.08; (c) dismisses this action with prejudice, and gives full force and effect to the Releases contained in paragraph thirteen (13); (d) provides that the Class Representatives and any member of the Class who does not exclude himself or herself from the Class shall be forever barred and enjoined from instituting or further prosecuting, in any forum whatsoever, including but not limited to, any state, federal, or foreign court, against Defendant, its respective predecessors or successors in interest, or its past, present affiliates, parents, subsidiaries, related parties, insurers, successors, and assigns, and their present or former directors, officers, partners, employees, members, shareholders, representatives, heirs, beneficiaries, assigns, agents, insurers, attorneys, collectors, or brokers any and all claims, under any legal theory, whether or not alleged, arising out of the allegations in this lawsuit; and (e) provides that Defendant shall be barred identically from pursuing any claim for relief against the Class Representatives, any member of the Class, or Class Counsel arising out of the claims asserted against Defendant in this action.

17. The settlement set forth in this Agreement shall not become effective unless and until the Circuit Court finally approves the Agreement and Settlement, without material alteration, as fair, reasonable, and adequate. In the event that the Circuit Court does not approve any part of this Agreement and Settlement, then this entire Agreement and Settlement shall become null and void and the provisions of paragraph ten of this Agreement shall apply, except that the parties may

agree in writing to proceed with a modified settlement and apply for Circuit Court approval of that modified settlement. In the event that this Agreement shall become null and void for any reason, the provisions of Rule 408 of the Federal Rules of Evidence will apply. No admission of law or fact, or combination thereof, will be found to exist as a result of this Agreement.

18. This Agreement has been negotiated by the Parties. The Parties are not relying upon the advice of any other Party or anyone associated with such Party as to the legal or other consequences of any kind arising out of this Agreement, including the tax consequences of any benefit. Each Party, the Class Representatives, and the Class will be responsible for satisfying any tax liability arising out of the benefit(s) it receives under this Agreement.

19. Neither this Agreement nor any negotiations shall be construed, offered, received as, or deemed to be, evidence of an admission or concession by the Class Representatives or the Class of lack of merit, or by Defendant of any liability or wrongdoing whatsoever, whether as alleged in the Complaint or otherwise. Defendant specifically denies that the conduct alleged in the Complaint gives rise to any such liability.

20. All documents, papers and notices required to be given by this Agreement to the Class Representatives, the Class, or Class Counsel shall be given by U.S. Mail or electronic mail to:

Shpetim Ademi (sademi@ademilaw.com)
John D. Blythin (jblythin@ademilaw.com)
Jesse Fruchter (jfruchter@ademilaw.com)
ADEMI LLP
3620 East Layton Avenue
Cudahy, Wisconsin 53110

All documents, papers and notices required to be given under this Agreement to Nationstar shall be given by U.S. Mail or electronic mail to:

Harry N. Arger (harger@dykema.com)

DYKEMA GOSSETT PLLC
10 South Wacker Drive, Suite 2300
Chicago, Illinois 60606
HArger@dykema.com

21. The Parties acknowledge that this Agreement constitutes the entire agreement among the Parties and any other earlier or contemporaneous oral or written agreement respecting its subject matter shall have no force or effect. The Parties agree that no party shall be deemed to have drafted this Agreement. The Parties cannot alter or modify this Agreement except by an instrument in writing executed by each of them. This Agreement includes all the representations of every kind and nature made by the Parties one to the other. This Agreement may be executed in any number of counterparts, with signatures transmitted via facsimile and/or electronically scanned and mailed formats, each of which together shall be deemed one and the same instrument. The Parties agree that a facsimile, pdf or other electronic signature to this release & settlement agreement shall be treated and deemed as an original signature.

22. The Parties to this Agreement agree to cooperate in the submission of this Agreement to the Court and will recommend acceptance of the Agreement by all necessary parties. As soon as practicable, they will take all necessary steps to secure the Circuit Court's Preliminary Approval of this Agreement. After notice to the Class and an opportunity to object, the Parties will take all steps reasonably necessary to secure the Circuit Court's Final Approval of the Agreement and to secure the dismissal of this lawsuit with prejudice, on and subject to the procedures and conditions set forth. The Parties shall cooperate in taking any such other steps as may be necessary or as may be requested by the Court and shall otherwise use their best efforts to implement this Agreement and the settlement provided for herein.

23. **Release of Attorneys' Lien.** In consideration of this Agreement, Class Counsel hereby waive, discharge and release the Releasees, as defined in paragraph thirteen (13), above of

and from any and all claims for Attorneys' Fees, by lien or otherwise, for legal services rendered by Class Counsel in connection with this case.

24. If any portion of this Agreement is found to be invalid, it will not affect the validity of the remainder of this Agreement.

25. This Agreement binds and inures to the benefit of the Parties and their respective heirs, beneficiaries, successors, and assigns. Each Released Party is intended to be third-party beneficiaries of this Agreement.

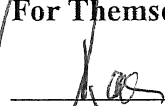
26. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Wisconsin for state issues and federal law for federal issues.

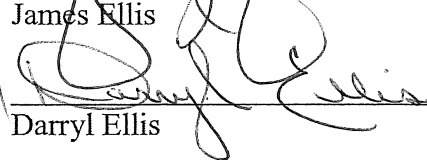
27. **WAIVER OF TRIAL BY JURY. THE PARTIES WAIVE ANY RIGHT TO A TRIAL BY JURY AS TO ANY ISSUE ARISING FROM THIS AGREEMENT OR THE RELATED DISPUTE.**

SIGNATURES TO FOLLOW

IN WITNESS HEREOF, the parties hereto, acting by and through their respective counsel of record have so agreed, on January __, 2024.

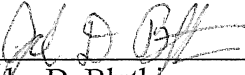
For Themselves and the Class:



James Ellis


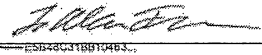
Darryl Ellis

For Class Counsel with respect to release of attorneys' lien:



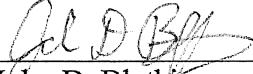
John D. Blythin
ADEMI LLP
3620 East Layton Avenue
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For Nationstar Mortgage LLC


DocuSigned by:
By: 

Name: LeAllen Frost
Title: Vice President & Associate General Counsel

Approved as to form



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